THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.18133 of 2006

Date : 9-10-2007

Between :

K.Hari Prasad s/o.late Purushotham Rao … Petitioner

And

The Joint Collector (CS) Krishna District Machilipatnam and two others … Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.18133 of 2006

ORDER:

1. Heard the Counsel.

2. The Writ Petition is filed for a Writ of Mandamus declaring the impugned proceedings Rc.No.B1/258/2006 dated 14-8-2006 passed by the 1st respondent suspending the kerosene licence of the petitioner as wholly illegal, arbitrary, without any authority and colourable exercise of powers and consequently to set aside the same and pass such other suitable orders.

3. This Court issued *rule nisi* on 30-8-2006.

4. The impugned order dated 14-8-2006 reads as hereunder:

PROCEEDINGS OF THE JOINT COLLECTOR, KRISHNA, MACHILIPATNAM

PRESENT : Sri S.SURESH KUMAR, I.A.S.,

Rc.B1/258/2006 Dated : 14-8-2006

Sub:- Civil Supplies – Kerosene Hawker – Jaggaiahpet Mandal & Town – Sri Kota Hariprasad, Kerosene Hawker for FP Shop No.16 – Jaggaiahpet – Certain irregularities committed – Report – Submitted by the Enforcement Deputy Tahsildar, Vijayawada suspended the Licence bearing No 23/81-82 Jaggaiahpet – Orders issued – Reg.

Ref:- 1. Commissioner of Civil Supplies, A.P., Hyderabad
D.O.Lr.No.N(2)/2914/06, dated 25-4-2006
2. Enquiry report of Sri T.Veera Basavaiah, Enforcement, Deputy Tahsildar, Vijayawada Letter No.Rc.31/Endowments Department/2006, dt.13-5-2006 received on 5-6-2006.

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ORDER:

The enforcement Deputy Tahsildar, Vijayawada has inspected the hawker point of Sri Kota Hari Prasad along with Mandal Revenue Inspector, Jaggaiahpet and Panchayat Secretary, Jaggaiahpet on 12-5-2006. At the time of inspection the Hawker has not produced kerosene Licence and sales registers. He has produced K.Oil stock register and as per stock register, there is an opening balance of 36 Ltrs. Of Kerosene as on 1-5-2006 out of 36 Ltrs. Of K.Oil on physical verification there is only 13 Ltrs. Of K.Oil is available. There is a shortage of 23 Ltrs. Of K.Oil

found at the time of inspection.

The Enforcement Deputy Tahsildar further reported that on perusal of the kerosene register for the month of March 2006, it was found that the hawker has himself entered card numbers and quantity of kerosene delivered and the column of signature/LT1 of the card holders was kept blank which shows that he has not at all distributed kerosene, but entered the card members only and diverted the kerosene quota of March 2006 into black market and caused lot of inconvenience to the card holders.

The Enforcement Deputy Tahsildar, Vijayawada further reported that Sri Kota Hari Prasad, Kerosene Hawker for Shop No.16, Jaggaiahpet has committed the following irregularities.

1. The kerosene Hawker has made fictitious entries in the kerosene sales register for the month of March 2006 and diverted (1860) Ltrs. of kerosene received during that month contravening conditions of licence issued under A.P. Petroleum Products (L&RS) Order 1980.
2. The hawker has worked as contractor and concealed the fact and under A.P. Petroleum Products (L&RS) Order 1980.
3. The Hawker has allowed benami person Ravuri Srinivasa Rao to distribute kerosene to the card holders on his behalf contravening conditions of licence issued under A.P. Petroleum Products (L&RS) Order 1980.
4. The hawker is collecting excess rates for K.Oil @ Rs.10/- per Ltr instead of Rs.9.50 per Ltr contravening Cl.13 of A.P. Petroleum Products

(L&RS) Order 1980 and Cl.4(1)(C) of "The Kerosene (Restriction on use and fixation of ceiling Price) Order 1993.

5. The dealer has made fictitious entries in the kerosene sales register for the month of March 2006 as if kerosene was issued without actually distributing kerosene to the card holders and failed to maintain true and correct accounts contravening Cl.12(1)(ii) of A.P.P (L&RS) Order 1980.

6. The hawker is distributing kerosene to the card holders for 2 days only, i.e., on 10th & 25th of every month and failed to distribute kerosene to the card holders at Government prescribed timings contravening Cl.20 (2)&(3) of APPP (L&RS) Order 1980.

7. The hawker is giving kerosene with less measurement i.e., only 3 Ltrs. is coming when the hawker delivered (4) Ltrs. contravening the conditions of licence issued under A.P.Petroleum Products (L&RS) Order 1980.

8. Sri Ravuri Srinivasa Rao who is distributing kerosene to the card holders on behalf of hawker Sri Kota Hari Prasad is arrogantly behaving with card holders and causing inconvenience to the card holders.

9. The Hawker has failed to mention the dates of distribution of kerosene in the sales register contravening conditions of licence issued under A.P. Petroleum Products (L&RS) Order 1980.

10. There is a shortage of 23 Ltrs. of kerosene at the time of inspection and the hawker has misused 23 Ltrs. of kerosene contravening conditions of

licence issued under A.P. Petroleum Products (L&RS) Order 1980.

In this connection, the Enforcement Deputy Tahsildar, Vijayawada reported that previously adverse news item appeared in local news papers of Jaggaiahpet on 21-11-2005 and 22-11-2005 about irregularities of Sri Kota Hari Prasad, Kerosene Hawker, Jaggaiahpet and the hawker has not changed his attitude and still causing lot of inconvenience to the card holders.

In view of the report submitted by the Enforcement Deputy Tahsildar, Vijayawada, the Licence bearing No.23/81-82 of Sri Kota Hari Prasad, Kerosene Hawker K.L.No.23/81-82, Jaggaiahpet attached to FP Shop No.16, Jaggaiahpet Town & Mandal is hereby suspended pending enquiry as per Cl.28 of APPP (L&RS) Order 1980 within immediate effect in the interest of the card holders.

The Mandal Revenue Officer, Jaggaiahpet is directed to make alternative arrangements by keeping the FP Shop Dealer concerned for distribution of the K.Oil to the card holders during the suspension period of the above hawker to avoid inconvenience to the card holders of FP Shop No.16.

Sd/-
S.Suresh Kumar

Joint Collector, Krishna

5. It is not in controversy that the impugned order was made by the Appellate Authority. Several facts had been narrated in the affidavit filed in support of the Writ Petition. This Court while disposing of W.V.M.P.No.2058/2006on 18-12-2006 made an order in detail relying on certain decisions as well. No doubt certain submissions are made before this Court that the Appellate Authority also can exercise the powers of the original authority. Hence, it cannot be said that the impugned order suffers from any illegality whatsoever.

6. In the light of the facts and circumstances, inasmuch as the interim suspension had been granted on 30-8-2006 and the same being operative, the said interim order to be operative till appropriate proceedings are taken up by the competent authority. It is made clear that the impugned order is hereby set aside giving liberty to the competent authority to initiate appropriate proceedings if the concerned competent authority requires to do so. As already referred to supra, the interim order granted by this Court specified supra to be operative till then.

7. The Writ Petition is accordingly disposed of. No order as to costs.

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Justice P.S.Narayana

Date : 9-10-2007

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